D.B. CIVIL SPECIAL APPEAL NO.508/2005
(State of Rajasthan V/s Sheokaran Vyas)

5.1.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr. L.R. Upadhyaya, for the appellant
Mr.S.K.M. Vyas, Caveator.

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Heard the learned counsel for the parties.

This appeal is directed against the order passed by the learned Single Judge on 1.9.2005.

The respondent – petitioner was Upper Division Clerk. He had given 3 months' notice seeking voluntary retirement on 1.9.1993. According to that notice, he had sought voluntary retirement w.e.f. 31.1.1994. However, before 31.1.1994, the date on which the retirement would have become effective, on 21.1.1994 the respondent – petitioner withdrew his notice for voluntary retirement dtd.1.9.1993. However, the appellants – non-petitioners refused to act on the withdrawal of the notice for voluntary retirement only on the ground that the application for voluntary retirement was accepted on 18.10.1993.

According to Rule 244 of the Rajasthan Service Rules

as was then in existence, a person could seek voluntary retirement after 15 years of service by giving 3 months' notice and in certain circumstances, the employer has right to refuse acceptance of such notice.

There is nothing in the Rules which prohibits the incumbent to withdraw his notice for voluntary retirement before retirement becomes effective. The voluntary retirement as per the notice could have become effective only w.e.f. 31.1.1994 and prior to effective date of voluntary retirement, he has withdrawn the notice of retirement.

It is settled law that unless contrary is provided under the Rules, the notice for voluntary retirement can always be withdrawn before it becomes effective.

In the present case, undisputedly, the notice for voluntary retirement was withdrawn prior to the date with effect from which the voluntary retirement was sought. Consequently, the conclusion of the learned Single Judge that appellants were not right in refusing to allow the petitioner to continue in service after 31.1.1994 does not suffer from any infirmity and the petitioner was entitled to continue in service even after 31.1.1994 as the notice for

voluntary retirement has been withdrawn before 31.1.1994.

Consequently, we do not find any merit in this appeal and the same is hereby dismissed.

(R.P.VYAS)J (RAJESH BALIA)J.

SS/-